UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555(JMP)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 11, 2012

10:03 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

Debtors' Motion for Authorization to Sell Equity Interests in Wilton Re Holdings Limited

Motion of Lehman Brothers Holdings Inc. and Lehman Brothers Special Financing Inc. for Approval of Settlement Agreement with Merrill Lynch Portfolio Management, Inc. and Merrill Lynch Capital Services, Inc.

Motion of Benisasia Investment and Properties, Ltd. for Relief from the Automatic Stay

Debtors' Motion for Authority to Exercise Right of First Offer Regarding Securities of Archstone Trust

Joint Motion of Debtors and Creditors' Committee to Extend Stay of Avoidance Actions and Grant Certain Related Relief

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Be seated, please. Good morning.

MR. HORWITZ: Good morning, Your Honor. Maurice Horwitz, Weil Gotshal & Manges, for the debtors. The first item on today's agenda is the debtors' motion seeking authorization to settle LBHI's equity interest in a reinsurance company, Wilton Re Holdings Limited, ECF number 23638.

LBHI owns approximately twenty-five percent of Wilton Re's outstanding shares which it purchased in three phases for an aggregate total of 300 million dollars. The last purchase which was for an aggregate of 122 million dollars at a per share price of fifty dollars per share occurred post-petition and was approved by this Court on January 21st, 2009.

By today's motion, LBHI seeks authorization all of its shares back to Wilton Re at a purchase price of sixty-nine dollars per share. This equates to more than 390 million dollars in the aggregate and enables LBHI to realize a thirty percent return on its investment.

As stated in the declaration of Jack McCarthy, Sr. that was filed concurrently with the motion, LBHI has concluded in its business judgment that the proposed transaction is in the best interest of its estate and creditors and is the best means of maximizing its investment in Wilton Re. In addition to offering LBHI an attractive return, the proposed purchase price equates to a slight premium of Wilton Re's book value at

a time when comparable insurance companies are trading at significantly lower multiples of book value.

As stated in the declaration of David Descoteaux, which was filed contemporaneous with the motion, Lazard ran a number of analyses focused on the trading multiples of selected publicly traded U.S. life insurers in order to evaluate the proposed purchase price. Lazard determined that the price per share offered by Wilton Re represents an offer that is both significantly higher than the trading multiples of the only publicly traded U.S. Life Reinsurance Company, Reinsurance Group of America and significantly above the median and mean of the trading multiples of other selected publicly traded U.S. life insurers.

In light of the current market comparables, LBHI has concluded that it is unlikely that any parties would be willing to make an above-market offer for what is essentially a highly liquid minority stake in Wilton Re.

LBHI's shares are also subject to certain transfer restrictions that would make their purchase less attractive to a third party. For example, a sale of LBHI's shares to a third party triggers a right to first refusal for both Wilton Re and for any shareholders of Wilton Re. Wilton Re's other shareholders could also exercise tagalong rights that, if implemented, may diminish the number of shares that a third party would be required to purchase from LBHI.

It is unlikely, as well, that an alternative means of monetizing LBHI's investment could materialize in the near future such as an initial public offering or a strategic sale as a going concern. Given that LBHI intends to begin making distributions in the near future, LBHI has concluded that it is in its best interest to seize upon this opportunity, to sell its shares at a premium and to accelerate the return on its investment ultimately.

I should note, Your Honor, that LBHI faces no risk of being diluted on account of the tagalong rights just mentioned. The share purchase agreement before the Court today requires Wilton Re to purchase one hundred percent of LBHI's shares irrespective of any tagalong rights.

In addition, it is LBHI's understanding that Wilton Re has obtained waivers of such tagalong rights from the other shareholders of Wilton Re in connection with this transaction.

As noted in the motion, the proposed transaction is subject to certain regulatory approvals from the Minnesota Department of Commerce and the Bermuda Monetary Authorities. Although technically, these regulators have not begun their review of the transaction and will not begin their review until this Court has approved the transaction, Wilton Re has been informed that there will be -- or there has been no negative feedback as of yet.

Your Honor, there are no objections to the motion.

The creditors' committee has evaluated the proposed transaction and filed the statement in support of the motion. That is ECF 24118. Unless Your Honor has any questions, the debtors would request entry of the order approving the motion.

THE COURT: I have no questions. I've read the papers including the supporting declarations and the committee's statement and this certainly appears on its face to be an attractive transaction. I approve it.

MR. HORWITZ: Thank you, Your Honor. I'll turn the podium over to my colleague, Zaw Win.

MR. WIN: Good morning, Your Honor. Zaw Win from Weil Gotshal & Manges for the debtors. The next item on the agenda is the motion of Lehman Brothers Holdings Inc. and Lehman Brothers Special Financing pursuant to Section 105 of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure for approval of the settlement agreement with Merrill Lynch Portfolio Management, Inc. and Merrill Lynch Capital Services, Inc. This motion is listed at ECF number 23637. No objections have been filed to this motion.

The settlement agreement that is the subject of the motion resolves a dispute between Lehman and Merrill that has come before this Court on several previous occasions, first, in connection with a stipulation provided for relief from the automatic stay; and second, in connection with a motion by Merrill for specific performance that this Court denied last

summer.

Unless this Court has any specific questions about the factual background of the dispute, I'll get right into the benefits to the estate.

THE COURT: You can get right into it. I remember the deal.

MR. WIN: As set forth in the declaration of Ronald Dooley that was filed contemporaneously with the motion, the settlement agreement is expected to benefit the debtors in several ways. First, the settlement agreement provides for the portion of the amounts due to LBHI and the Series B bonds, which are subordinate, will be paid in connection with the disposition of each of the five properties that are the subject of the bonds despite the fact that recoveries under the Series B bonds would otherwise be subordinate to Series A bonds.

Second, the profit sharing mechanisms contained in the settlement agreement incentivizes Merrill to get the highest return for each of the properties making it more likely that there will be some amounts remaining to pay off the Series B bonds after the Series A bonds have been paid in full.

And finally, the settlement agreement will relieve the necessity for the debtors to expend any further funds in connection with the dispute with Merrill.

Several of the conditions for closing, notably, Merrill's delivery of the executed confirmation from the

trustee and the opinion of bond counsel, have not occurred yet. So the settlement agreement has not been executed. Accordingly, the debtors have made a few modifications to the proposed order just to recognize the fact that they're now seeking approval to enter into an order substantially in the form that was submitted with the motion instead of an executed order. I have a redline of the proposed order if the Court would like to take a look.

THE COURT: Please hand that up. Thank you.

MR. WIN: As the Court will note, there's a slight change in the first page, again, reflecting the fact that the settlement agreement has not been executed. And then again, on the second page, in the second "Ordered" paragraph, just eliminating the execution dates since it hasn't, in fact, been executed yet.

THE COURT: Can you tell me if there's any issue in particular that's allege of the delay?

MR. WIN: We understand that there isn't an issue. It's just a question of timing over the holiday. Merrill wasn't able to line up all the necessary consents. But we expect to have everything in order in the next few days.

THE COURT: Okay. Fine.

MR. WIN: Unless the Court has any questions, the debtor requests that the order be entered.

THE COURT: It's fine. I approve it.

MR. WIN: Okay. Thank you, Your Honor. The next matter on the agenda is the motion of Benisasia Investment and Properties Ltd. for relief from the automatic stay which was listed at ECF 23614. The debtors had filed a limited response to this at ECF number 24042. I am pleased to report that the debtors and Benisasia were able to reach a consensual resolution of their dispute last night and have a stipulation that we'd be prepared to hand up at the end of the hearing provided for a limited relief from the automatic stay to allow Benisasia to commence an action against LBHI in state or federal court in New York. Unless the Court has any questions about that, we just propose to hand it up at the end of the hearing.

THE COURT: The only question I would have is about the venue and jurisdiction for that proposed litigation. Is that going to be a bankruptcy court litigation or litigation elsewhere?

MR. WIN: We don't expect it to be brought in the bankruptcy court. It likely will be brought in state or the dis -- state court in New York or the district court in New York.

THE COURT: Okay.

MR. WIN: Okay. Thank you, Your Honor. Jacqueline Marcus is going to handle the next matter on the agenda.

THE COURT: Fine. Thank you.

MS. MARCUS: Good morning, Your Honor. Jacqueline Marcus of Weil Gotshal & Manges on behalf of Lehman Brothers Holdings Inc. and its affiliated debtors. Item number 4 on the agenda is the debtors' motion for authority to exercise the right of first offer regarding securities of Archstone Trust. And that's at ECF number 23620. Jeffrey Fitts, co-head of Lehman's real estate group, filed a declaration in support of the motion and he is present in Court today.

There are no objections to the motion, Your Honor. As reflected in the agenda each of Bank of America and Barclays filed their response to the motion, but those responses were in the nature of reservation of rights relating to the Archstone adversary proceeding. And the banks do not oppose the relief requested in the motion. The creditors' committee has filed a statement in support of the motion.

I know the Court is very familiar with the facts regarding the right of first offer, but, with your permission, I will very, very briefly summarize.

THE COURT: That's fine.

MS. MARCUS: Bank of America and Barclays Bank are parties to an interest purchase agreement with ERP Operating Limited Partnership, an affiliate of Equity Residential which is an Archstone competitor, pursuant to which they would sell half their stake or twenty-six and a half percent of Archstone to Equity Residential. Under the documents governing their

investment in Archstone, the debtors have a right of first offer to buy the stake at the price the banks contract it for with Equity.

In the motion, the debtors requested authorization to spend approximately 1.325 billion to acquire twenty-six and a half percent of Archstone from the banks by exercising their right of first offer. The motion also provided that in the event the Court rules in the adversary proceeding that the debtors were entitled to exercise the right of first offer for the banks' entire interest then the debtors requested authority to purchase the entire fifty-three percent interest.

Inasmuch as the Court has not ruled on the merits in the adversary proceeding, the debtors now seek authority to exercise their right of first offer for the twenty-six and a half percent interest in Archstone. Consequently, if the motion is granted after the closing, the banks collectively would own twenty-six and a half percent of Archstone and Lehman would own seventy-three and a half percent. For the reasons set forth in the motion and in the declaration of Mr. Fitts, the debtors believe that the exercise of the right of first offer is in their best interest and should be approved pursuant to Sections 105 and 363 of the Bankruptcy Code.

Specifically, the debtors believe that Equity Residential has undervalued Archstone by as much as a billion dollars. There are two consequences of that: first, that

means that the debtors would acquire this additional interest at a favorable price; and second, it means that one of the alternatives that was available to the debtors exercising their tagalong rights to participate in the sale to Equity Residential does not make sense from the debtors' point of view.

In addition, the debtors believe that the value of Archstone will be adversely affected if they do nothing and have Equity Residential, a competitor, as a partner in the investment. Therefore, they feel it is essential to exercise their right of first offer particularly at a favorable price, in order to maximize the value of their interest in Archstone.

Unless the Court has further questions, the debtors request that the Court grant the motion and authorize them to exercise the right of first offer.

THE COURT: I have no questions and I approve the motion as unopposed. And I treat the fact that the creditors' committee has given a statement indicating its approval as a sign that this is viewed as being in the best interest of the estate and its creditors. It's approved.

MS. MARCUS: Thank you, Your Honor. Item number 5 on the agenda is the joint motion of the debtors and the creditors' committee to extend the stay of the avoidance actions and grant certain related relief. Pursuant to this motion, the debtors seek the following relief:

First, an extension of the order staying avoidance actions which currently expires on January 20th, 2012 to July 20th, 2012;

Second, the debtors seek an extension of the time to complete service of process on avoidance action defendants until the later of March 30, 2012, or the time otherwise provided by the bankruptcy rules. This portion of the motion relates primary to a handful of defendants in Austria and Taiwan and has not been objected to.

As set forth in the motion as well as the reply, the debtors have taken full advantage of this day to initiate settlement discussions with avoidance action defendants and to continue the ADR process. That the ADR process has been a success cannot be disputed. As indicated in the twenty-sixth monthly status report filed yesterday by Peter Gruenberger, as a result of mediation, the debtors have achieved settlements of 173 ADR matters involving 182 counterparties and generating in excess of a billion dollars for the estate.

Another measure of the success is that out of the sixty-nine ADR matters that have reached the mediation stage, sixty-four of them have been settled. As indicated in Mr. Gruenberger's letter, another fifteen mediations have been scheduled to commence between today and the end of February.

The debtors seek an extension of the stay to enable them to continue to build on the successful ADR process and to

resolve pending matters while minimizing the time and expense expended by the debtors and the avoidance action defendants as well as the burden on the Court. The debtors submit that under Section 105 of the Bankruptcy Code, the number and complexity of the actions, the lack of prejudice to any of the avoidance action defendants and the progress achieved to date warrant the requested extension of the stay.

The extension of the stay would affect more than 350 parties; yet, the liquidators of LB Australia have filed the only objection to the proposed extension. As the Court is well aware, LB Australia is neither an avoidance action defendant nor even a creditor in these cases. As noted in our reply as well as the reply we filed in response to LB Australia's objection to the prior extension motion, LB Australia is not a parties in interest in these cases and therefore is not even entitled to be heard with respect to the stay. I refer Your Honor again to the Second Circuit's decision in Refco and Judge Chapman's decision in Innkeepers as support for the proposition that LB Australia lacks standing here. Indeed, as cited in our reply, during the hearing on June 15th, LB Australia's counsel virtually conceded the point.

Like it did in connection with the debtors' prior request to extend the stay, LB Australia contends that it cannot wind up its own estate without "a legal determination" of the Dante program flip-clause dispute. This argument

completely ignores the real prejudice in time and money to the actual defendants in adversary proceeding number 3545 who would be forced to start spending real litigation dollars if the stay were lifted as well as the prejudice to the debtors and the burden on the Court.

Moreover, as noted by the Court at the June 15th hearing, the issue of interpretation of the Dante flip-cause language has already been decided by this Court. In fact, what LB Australia has in mind is some type of appellate review.

At what stage would LB Australia be satisfied that there is a "legal determination"? It lost on its motion to intervene in the avoidance action in this court. Its appeal was dismissed by the district court. And LB Australia has appealed that decision to the Second Circuit. One can only imagine that LB Australia envisions the same appellate process with respect to the flip-cause dispute.

LB Australia also argues that the pace of ADR settlements has slowed and therefore it is "clear that the remaining derivatives contracts that could have been readily settled would have been settled". That's a quote from their objection in paragraph 8.

As reflected by the progress reflected in the Gruenberger report, the debtors continue to make substantial progress. Since the last motion filed for extension of the stay, the debtors have continued to commence ADRs at the rate

of one every two days. And the debtors have kept up that pace notwithstanding the fact that during the past six month period, the debtors formulated, negotiated and obtained confirmation of their plan of reorganization. Now that the plan has been confirmed, the debtors and their professionals will be able to devote even more time and energy to resolution of these disputes and the debtors fully expect to settle many more of them. However, in order to be able to devote their energies to the settlement and ADR process, it's essential that the stay be continued.

LB Australia's last point is that the stay should be terminated because Lehman has not taken any steps to commence ADRs with respect to Dante program flip-clauses with respect to the Australian noteholders. LB Australia fails to take into account that another alternative to the debtors is negotiation. Indeed, there is one Dante series in which LB Australia has notes in which the debtors are close to reaching a negotiated settlement even without the commencement of an ADR. And indeed, LB Australia, among others, is expected to sign a settlement agreement with respect to that series shortly.

As noted in our reply, there have been other ADRs commenced with respect to other Dante program series. LB Australia's speculation that Lehman has "no intention of initiating ADR procedures with respect to the Dante program flip-clause with the Australian noteholders is just that, mere

speculation, and, in fact, it's not correct.

In conclusion, Your Honor, LB Australia, which is not even a defendant in an avoidance action, should not be permitted to singlehandedly derail the ADR and settlement process that has been so successful to date. The issues raised in the objection pale in comparison to the success of the debtors' efforts, the potential for continued success resolving these matters, and the prejudice to the debtors and their estates and the actual avoidance action defendants in the event that there were a full scale resumption of the litigation. As a result, the debtors request that the objection be overruled and the Court extend the stay for an additional six months.

On December 6th, Your Honor, we filed a revised proposed order, docket number 24098. The change is that we added a new paragraph which is the second decretal paragraph on page 3 of the blacklined order. I don't know if you have it in front of you.

THE COURT: I don't have it in front of me.

MS. MARCUS: I have a copy, if I may?

THE COURT: Please. Thank you.

MS. MARCUS: The new language is on page 3 which, actually, on your copy is marked as page 6. It makes clear what the timetable will be upon the expiration of the stay. The new paragraph provides that unless the stay is extended by another order or the parties otherwise agree, each avoidance

action defendant would be required to answer or otherwise respond to the complaint by September 15th, 2012 or thirty days after the filing of any amended complaint. The debtors request that the Court enter the revised order.

THE COURT: Okay. I have a few questions. And I think it should be noted that Lehman Brothers Australia filed a Chapter 15 case in the southern district of New York as a case related to the Lehman Brothers bankruptcies and that the Chapter 15 has been assigned to me. No matters have yet transpired with respect to that filing.

I also want to note that I have some -- apparently, a lot of people want to leave at this moment. But why don't we let them continue to file out. Lehman Brothers Australia should not be offended. I'm not. But we just lost about twenty people.

I do have a question about the debtors' intentions with respect to the portfolio of litigation that is subject to the proposed extended stay. I recognize the decretal paragraph that is blacklined noting that unless there's a further order, things may start happening in September. Is it necessary for there to be a stay as to all of the litigation? I mean, in effect, one of the questions that I have here is that while ADR is indisputably a success -- and the results speak for themselves as being beneficial to the estate and also beneficial to the Court, I might add, because this means that

matters that might otherwise be burdening the Court are being managed in a private fashion.

One of the things that Lehman Brothers Australia is, in effect, saying -- and they'll speak for themselves even though there are questions as to their standing -- is that the stay as to us is prejudicial because we're looking for a toehold as to a legal issue the resolution of which is important to the administration of our estate.

Your papers indicate and your oral argument today indicates that negotiations are proceeding with respect to the flip-clause issue as to certain aspects of the Dante program. But it's not clear to me whether or not that has anything to do with the litigation that LBA cares about. My sense is it does not. But you can clarify that. Nor is it clear to me how many of the cases that are being made the subject of this proposed stay are Dante-related litigations or litigations that otherwise relate to the flip-clause issue.

So I've said a lot but what I'm really trying to get my arms around is what this really means in terms of the number of cases that are affected and the practical benefits to the debtor in terms of managing this portfolio of litigation in having a stay that applies across the board.

MS. MARCUS: Okay. I'll do my best to answer your questions, Your Honor. One of your questions was did the settlement that I alluded to relate to the matters in which LB

Australia is interested. And some of them do. Some of them to date and undoubtedly more of them in the future. So, for example, I think it was in their -- the LB Australia objection to assumption of executory contracts where they noted that there were six series of Dante notes that they own. One of those series, which is a series in which I believe LB Australia has its largest position, is the one that is within inches of being settled at this moment.

So the effect on the litigation is that if matters get settled, the scope of the litigation or any particular litigation may be narrowed. The adversary proceeding that LB Australia claims affects it indirectly is one in which there are a hundred -- I think it's a hundred defendants or nearly a hundred defendants. So it is possible that the process of settlement will result in one or more, hopefully more, of those defendants settling out of that litigation therefore narrowing the scope of that matter.

The one that I can answer -- and maybe my partners, Mr. Slack can, is how many of the cases are Dante-related litigation.

MR. SLACK: There's one major mass action that contains all of the Dante --

MS. MARCUS: That's the 3545 --

MR. SLACK: Exactly.

MS. MARCUS: Then it's that one.

MR. SLACK: And it contains the hundred defendants.

MS. MARCUS: Your Honor, as to the other matters, I'm sure Your Honor is aware, the defendants to those other matters haven't objected to a continuation of the stay.

THE COURT: Right.

MS. MARCUS: And I believe that the creditors' committee which, for example, is handling the LMA actions is involved in negotiations regarding settlement of those actions. So even though they're not part of the formal ADR process or may not be, there's still a benefit to preserving the status quo on the litigation front and enabling the creditors' committee with respect to those actions to continue their discussions.

THE COURT: Do individual defendants have the unfettered right to seek relief from this blanket stay to the extent that it can be demonstrated that a party is prejudiced or that the stay is no longer a useful exercise because the parties have negotiated to frustration?

MS. MARCUS: I believe that the order provides that parties -- defendants can seek to have the stay terminated before the, in this case, six-month extension.

THE COURT: And have defendants contacted the debtors with respect to this to express any comment or position or has there simply been no objection by a defendant?

MS. MARCUS: There were two. One led to the change in

the language in the order which was -- this particular law firm at least wanted to make sure that they knew what would happen when the stay ended in terms of time period. And another one who is a defendant that has not yet been named but has been identified as -- represents someone who has been identified as a noteholder was concerned that the language, that new language, not shorten the time that they would otherwise have to answer or move. And so, in a separate, basically, side letter/exchange of e-mails, we confirmed that that would be the case and they would have the necessary thirty days to respond when they were added as a defendant.

THE COURT: Okay. Thank you.

MR. COHEN: Your Honor, David Cohen, Milbank, Tweed, Hadley & McCloy, here on behalf of the official committee of unsecured creditors as a joint movant. There's one small point that I want to briefly address. The LBA objection seems to suggest that the ADR process has run its course and if these cases would have settled they would have settled by now. I'd like to refer the Court back to the twenty-sixth status report that was received yesterday and have the Court note that over the next six weeks, there are an additional fifteen mediations that are on the calendar. This is a robust process. It is working. There is nothing broken with it. We agree with the Court and with the debtors that it's been an overwhelming success. We see no reason to change the status quo.

THE COURT: Thank you. I'll hear from counsel for Lehman Brothers Australia notwithstanding the fact that the debtor takes the position that you have no standing to be heard here.

MR. SELIGMAN: Your Honor, we are here in the unenviable position at being the only objecting party to this.

THE COURT: What gives you standing to object since you're not a party and your motion to intervene was denied and the district court effectively stripped your rights and you're now pleading for some kind of relief in the court of appeals?

MR. SELIGMAN: Your Honor, two things on that. And there's one at least new fact which is there's two adversaries amongst all the various adversary proceedings here, there are two adversaries that we've been sort of talking about. One is 3545 which is the adversary which is what I'll call sort of the Dante flip-clause adversary proceeding. The defendants in there are two collateral trustees and approximately ten of these SPVs which are basically sort of pass-through creations.

In addition, there's 3547 which is -- and I'm sorry. 3545 is obviously the one where the request by LBHI was the termination of the flip-clause issue. 3547, that's the adversary where it's brought against a larger group of defendants. In that proceeding, the swap was unwound and monies were actually paid out to noteholders. So part of that proceeding is not only a request for declaration on the

enforceability of flip-clause but also a recovery action against noteholders who've received monies.

Since we were last before Your Honor, we were contacted through Citibank and an intermediary that this second adversary, 3547, did relate to funds that actually LB Australia did receive. So that 3547 is actually against a -- it's against named defendants and also a class of noteholders who received funds, apparently erroneously as they allege. We did inform, after we received notice, that there was this proceeding and that it related to funds that we'd received. We did provide notice to the debtors in November that -- 'cause they were in the process obviously doing discovery to find out who the defendants were. We did notify them that we were actually a party who had received funds under this. And we were willing to accept service if they so chose to do so.

So, as a technical matter, we are, though not necessarily named, we are in the class of defendants that did receive funds under 3547. And so, I think that's a new fact in terms of standing as a party with respect to one of the adversary proceedings that is --

THE COURT: Without going too far down this path --

MR. SELIGMAN: Yes.

THE COURT: -- your client is the entity in Australia that's in administration. And you act as counsel to the liquidators, is that correct?

MR. SELIGMAN: That's correct, Your Honor.

THE COURT: That being so, how does a claim against creditors of your estate give your client standing in any litigation?

MR. SELIGMAN: Well, I would say, Your Honor, that there's two ways in which we have capacity here. First, also, we are actually a holder of some of the very notes that are at issue. So all the litigation against the collateral trustees and the noteholders with respect to the enforceability of the flip-clause, we are actually a holder of some of these notes ourselves, approximately seventeen million. The -- and then the second issue is that other noteholders to the extent that -- and depending on how the flip-clause is ultimately resolved, may have claims back against the LB Australia estate for the amount of -- for various claims that we cited in our pleadings. We have also -- the LB estate -- we have also filed contingent claims against LBHI for a contribution to the extent that the LB estate is liable. So we have filed those claims, too, as considered contribution claims against the estate.

THE COURT: To be clear, though, is it more correct that LBA is not a defendant in the adversary 3545 nor is it a defendant in adversary 3547?

MR. SELIGMAN: On 3545, yes, it is not a defendant. On 3547, I would actually argue although we're not named, it was brought against a group and a class of people who received

money. When the complaint was filed, LBHI obviously didn't know who those recipients were. And part of what they've been doing over the past year or so is conducting discovery to ascertain who those noteholders are. I presume at some point they will be amending their complaint and serving people and naming them as actual defendants 'cause as of -- they're probably in the process of identifying the actual recipients and will so name them as defendants. But --

THE COURT: So are you acknowledging here publicly that you are vulnerable to a claim that LBA should turn over property to the estate?

MR. SELIGMAN: Well, we would contest the substance --

THE COURT: But you're --

MR. SELIGMAN: -- but, yes, we are acknowledging that --

THE COURT: You're acknowledging that you received distributions in your capacity as a noteholder although you are not named as a defendant in 3547.

MR. SELIGMAN: That's correct. And we have so notified that to the debtors in writing.

THE COURT: Okay.

MR. SELIGMAN: Your Honor, just briefly with some other points. We haven't -- the LB estate, as Your Honor has noted, is, in effect, stuck in being able to complete its windup and its administration. We have not challenged the

success of the alternative dispute resolution program. The numbers speak for itself. Obviously, the -- not only do they need time to do it in a methodical and organized process but certainly over the past six months, they've been focused on their plan of reorganization which obviously consumed a great deal of time.

I think, Your Honor, though, at some point with the stay, it's a question of balancing the benefits to the debtors and the estate for a -- as you said, a blanket stay in comparison to the relative harms that may exist with respect to other parties. And I would argue, Your Honor, that at this point with the stay being in place for approximately fifteen months and this request for another six months that now is the time that they've emerged -- or in the very near future that the stay should be lifted at least with respect to the adversary proceedings or at least just with respect to us as parties with respect to those adversary proceedings. And I would say so, Your Honor, because of the harm to us that we've noted in terms of the fact that we can't move forward with our estate, the fact that the confirmation process is behind on the debtors' side. To date, there really hasn't been any alternative dispute resolutions with respect to the notes in which we have an interest.

THE COURT: Have you, on behalf of your clients, affirmatively sought to engage in an ADR process in order to

negotiate some kind of resolution that would be beneficial to your estate?

MR. SELIGMAN: Absolutely, Your Honor. We have reached out over the past several years. We've brought our clients from Australia here to New York to meet with the debtors. The last meeting, I believe, was probably about a year ago when the -- in the UK when the flip-clause litigation was under consideration by the UK Supreme Court. And nothing really has happened since then.

The liquidators were trying as best as they could to also serve as an intermediary between LBHI and all of these various noteholders who have claims against the Australian estate to try and put people together to try and see if we can work a holistic resolution. And we remain willing anytime anywhere to be able to do that. We'd do that as soon as we could get someone from Australia on a plane here. We would do that immediately. But to date, none of that has happened.

The one potential -- and I don't want to get into settlement discussions, but the one potential settlement of a Dante-related issue that was mentioned, that's one where it's clear that the LBHI estate is out of the money. And so, the flip-clause issue is irrelevant to that because the flip-clause only matters if LBHI is in the money. So that one is a completely separate issue.

But on the core issue of the flip-clause and the Dante

litigation with respect to our noteholders, that has been on ice. And we would love to be able to do that. And our point is that if the stay has been in place for this long and there hasn't been any -- in the past year, any discussions or any instigation of an ADR process, we don't know what's going to change. And given that, we see that if they're not intending to do that -- certainly, if we were engaged in that, we would not be here arguing that that litigation should commence. And so, we only want the opportunity to try and have that happen and get the issue decided how ever it's decided so that the liquidators can fulfill their fiduciary duties. And --

THE COURT: Do the liquidators have the discretion to settle?

MR. SELIGMAN: They do. I'm not an expert on what the Australian rules are for settlement. But, yes, they have the authority to settle. I'm sure there are rules and mechanisms for how they go about getting court approval from the Australian court. But obviously, we have the ability to settle; otherwise we wouldn't have reached out and tried to engage in settlement discussions in the past.

The last point I'd just mention again about 3545, it's not this hundred defendants. It's two collateral trustees. They're the real parties in interest. They're the ones who litigated the flip-clause litigation in the UK, this being Bank of New York. They're the ones who litigated the Mahogany

dispute previously before Your Honor. The other ten defendants to SPV for this series, for that series, again, their share into these is probably one person sitting at a desk in Luxembourg or something like that who just gets a fee for being a director of an SPV. So they're not going to really be a party to the adversary proceeding. So I think if the debtors are not going to try to engage in either ADR procedures, mediation, settlement discussions, we just don't see that things are going to change and we'll be back here in six months. And we would argue that this issue should go forward especially since it's an issue that's a relatively straightforward legal issue. The Court has heard it before. And the briefs would be relatively easy to submit to Your Honor. So we don't see a huge amount of prejudice on this particular issue.

THE COURT: Tell me the status of your court appeals proceeding and to what extent do you even have the ability to re-enter the foray here while you are litigating your right to intervene in the appellate court? Haven't you lost twice on the very issue that you're now urging me to, in effect, reconsider because to grant your objection to the extension of the stay is, in effect, to give you the ability to intervene in the litigation which I previously denied as an interlocutory matter and to allow you to energize that litigation as a party for your own purposes thereby seeking to use it as a platform

to relitigate an issue that I have already twice ruled on and use that as a platform for further appellate review. That's exactly what I said no to quite a while ago which the district court said was interlocutory and what you're now seeking to pursue at the court of appeals level. Why should I even hear you now? Don't you need to wait until the court of appeals rules on the matter that you're prosecuting there?

MR. SELIGMAN: Your Honor, I don't believe so. And the reason why is because when Your Honor did originally deny our motion to intervene, you did do so without prejudice --

THE COURT: Absolutely.

MR. SELIGMAN: -- given the fact that things may change or the fact that there was a stay that was a stay that was going to come up again for renewal. And so, I don't believe we're -- I don't believe we're precluded on that score.

I would also mention, Your Honor, that our interest really is in -- and perhaps I was actually thinking about this, Your Honor, as I prepared this argument. When I was last before Your Honor, I probably didn't convey our position as articulately as I could. Our desire is to get this issue resolved, again, one way or the other. If Your Honor were -- I don't think we necessarily need to be a party to the proceedings. If the matter was litigated and it was litigated between the debtors and the collateral trustee and they submitted briefs, I think we would be fine with that. Our

interest is not interjecting another party that's going to file another set of briefs that's going to engage in other aspects of things. We're just interested in getting the issue resolved. And the problem is, is that although Your Honor has ruled on this issue before, it was in a different adversary proceeding. I don't expect Your Honor would come to a different conclusion. But at this point in time, the collateral trustee is subject to a UK decision saying that the money should go to the bondholders and yet, they know Your Honor's ruling in a different adversary proceeding. And so, they're not -- they can't proceed with making any distributions or winding up. And so, I think that they're just looking for clarity in this particular adversary proceeding, 3545 (sic).

THE COURT: Well, you're speaking as if you're in the head of the collateral trustee and speaking as if you are the collateral trustee. Do you have a clue as to what the collateral trustee wants or believes or thinks is right?

MR. SELIGMAN: We have spoken certainly to the collateral trustee. I don't want to necessarily speak for them but I do know that they have communicated to us that until there's a resolution of this matter collectively -- they recognize the UK decision. But until there's a resolution here, they don't want obviously take the risk of complying with the UK decision but being in violation of the stay or being in violation of Your Honor's previous ruling. So --

THE COURT: Well --

MR. SELIGMAN: -- they have at least communicated that to me.

THE COURT: Well, isn't it notable that the collateral trustee does not oppose the extension of the stay for six months?

MR. SELIGMAN: Well, from their perspective, I don't think that's particularly notable because --

THE COURT: I do.

MR. SELIGMAN: Well, I would say they right now -- the status quo isn't necessarily hurting them in the sense that there's money set aside and the passage of time doesn't really matter to the collateral trustee.

THE COURT: Have you made demand that the collateral trustee sit down with the debtor as part of an expedited and diligent ADR process in which you might participate and that that be done promptly so that you can move ahead with the administration of the LBA estate?

MR. SELIGMAN: I myself have not. Our --

THE COURT: No. But has anybody done that?

MR. SELIGMAN: You know what, it may have -- I don't want to misspeak. That specific request may have come from our Australian client. I just don't know. But we have certainly attempted in speaking with LBHI to have discussions and we would love to have discussions tomorrow.

THE COURT: What is your real objective here? I know that the Chapter 15 case was filed on Friday. I don't know if that was coincidental to today's argument but I certainly took note of it as did the newspapers. What are you trying to accomplish in the southern district of New York that would facilitate the administration of the LBA case in Australia?

MR. SELIGMAN: Your Honor, it was coincidental. There are some other matters and potential resolutions with other parties that I'm not at liberty to publicly disclose.

THE COURT: Fine. I'm not trying to put you --

MR. SELIGMAN: Yeah.

THE COURT: -- on the spot.

MR. SELIGMAN: But it was not --

THE COURT: And we haven't had -- we have had no proceedings whatsoever with respect to that separate Chapter 15 case. But I think it is publicly disclosed to the parties in the litigation. I'm going to publicly disclose it now that Justice Peter Jacobson of the federal court in Sidney, Australia issued an opinion in December of last year relating to the LBA case. And attached to that opinion was a letter addressed to me as a result of that letter, which initiated court-to-court communication, Justice Jacobson and I spoke by telephone and were reported to the parties in the litigation the general outlines of that conversation. There's no need to go into it here. But I think it notable that the Court in

Australia and the Court in the United States have had some initial conversations about possible future cooperation and communication between the two Courts. It is not at all clear at this juncture whether anything substantive will ever be discussed by the two Courts or whether there will be a need for such communication at any time in the future. But at least the opportunity for some Court to "dialogue" has been established. I wanted that to be clearly understood on the public record.

But it's also completely obscure to me at the moment as to what you're trying to accomplish here other than to make some trouble.

MR. SELIGMAN: Your Honor, in all sincerity, we are really not trying to make trouble. We really are trying -- the liquidators haven't been able to move forward in the resolution of their estate because the contingent claims against their estate relating to this flip-clause issue are such a potential large portion of the claims against their estate. And we -- at the end of the -- the liquidators are looking for resolution. At the end of the day, if there's a resolution that says that the flip-clause -- that this money belongs to LBHI -- well, I guess, the liquidators wouldn't be happy 'cause the amount that they would be able to distribute in their estate would be -- or the amount of claims they would have would be larger. At the end of the day, it is what it is.

We are looking for resolution because the liquidators

do have a fiduciary duty and a court directive to wind up their estate as efficiently and as administratively expeditiously as they can. And we are really just looking for resolution -- a holistic resolution so that the money can be distributed, somebody in claims can be determined. That's really what we're after. And how ever it plays out is how it's going to play out. And that's really what we want to seek. And that's been our effort to just try and get the issue decided in the right way.

THE COURT: It seems to me that's best accomplished by means of participating in the ADR program.

MR. SELIGMAN: Your Honor, we would be pleased to commence -- to have that process commence with us. We would be happy to coordinate with the Belmont noteholders, with the collateral trustee, bring our clients from Australia here. We would be willing to do that tomorrow.

THE COURT: All right.

MR. SELIGMAN: Thank you, Your Honor.

MS. MARCUS: Just a couple of points, Your Honor. First, LB Australia acknowledged that the Court should be balancing the benefits and harms to other parties. And in my notes, I underlined the word "parties". As Your Honor has noted, LB Australia is not a party to either one of the adversary proceedings.

Secondly, you asked, Your Honor, whether LB Australia

had affirmatively sought to engage in ADR. And I believe there have been discussions. As indicated, it was quite a while ago. But in terms of anybody picking up the phone and saying let's go into ADR now, I don't believe or at least to my knowledge, that request has not been made.

Thirdly, Your Honor asked what will change over -- or counsel for LB Australia asked what will change over the next six months. I can report, Your Honor, that Lehman does expect to file ADRs with respect to the Dante deals, in which LBA is a noteholder, within the next quarter. So, as we indicated, we have made substantial progress. Plan's done. We're focusing our attention on this process. And we do expect things to change within the next six months.

THE COURT: Okay.

MS. MARCUS: Thank you, Your Honor.

THE COURT: The joint motion of the debtors and the creditors' committee to extend the stay is granted. The objections lodged by counsel for the administrators or the LBA estate are overruled. The reason for overruling the objection is manifest. First, LBA really has no standing to object. LBA is not a party to the pending litigation. And even the somewhat strained reference to being within the class of defendants in adversary 3547 does not get to the question of standing in 3545 which is the Dante flip litigation.

The procedural posture of the case is such that LBA's

standing has been rejected on at least two prior occasions. And it is pursuing its appellate rights and the court of appeals at the moment with respect to earlier orders of the Court denying the right to intervene in 3545.

On the merits, which I think is a better way to address this, we can assume for the sake of argument solely that LBA has rights that maybe align with a party and that LBA is simply endeavoring by virtue of objecting to the extension of the stay to prosecute in this court its argument that the flip clause determinations previously made in both the perpetual litigation and the Ballyrock litigation should be reconsidered anew and, depending upon the outcome, become a vehicle for further appellate review. That may well happen one day. The district court, in considering and ultimately rejecting an earlier appeal by LBA, noted that at some point it is foreseeable that issues with respect to the flip-clause may end up and revisited by the district court, the court of appeals or perhaps even the Supreme Court although she did not say that part.

The goal here is not to frustrate any party. The goal here is to deal fairly with the interests of all creditors, with the interest of the estate as a whole, and to maximize the likelihood of favorable distributions to creditors under a confirmed plan. No one disputes the efficacy and success of the ADR program that has been undertaken to date. The results

really do speak for themselves.

Now as to the specifics of LBA's concern, the best and most practical approach to dealing with the needs of the LBA estate as those needs may be tied to the disposition of the flip-clause issue, it would be for that issue to be the subject of ongoing negotiations either negotiations simply between the parties themselves or negotiations that are facilitated through alternative dispute resolution procedures.

To state the obvious, in order for there to be a final determination of the conflict between the bankruptcy court's determination of ipso facto provisions of the U.S. Bankruptcy Code and the UK court's determination of anti-deprivation principles would require years of litigation. To the extent that LBA is focused on a prompt determination of issues in its own case, it needs to address this on a consensual basis and come up with some pragmatic solution. That solution is not litigating this to the Supreme Court although that might happen one day. I predict if it does happen one day, it will be many years from now. And the six-month extension of the global stay of litigation will be by a rounding error in that calculation of time.

For that substantive reason, regardless of standing, the objection of LBA is overruled.

MS. MARCUS: Thank you, Your Honor. That brings us to the end of the LBHI calendar. And I know that there's

something on the calendar for LBI.

THE COURT: Okay.

MR. SELIGMAN: Your Honor, may I be excused?

THE COURT: Yes.

MR. SELIGMAN: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 11:03 a.m.)

I N D E X

R U L I N G S

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib

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